IN THE

Supreme Court of the United States

October Term, 1951. No. [redacted]275

UNITED STATES OF AMERICA, EX REL.,
HUBERT JAEGELER,
Petitioner,

vs.

UGO CARUSI, Commissioner of Immigration and Naturalization, and CARL ZIMMERMAN, District Director for District No. 2, Philadelphia,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT. CASE NO. 10-373 AND BRIEF IN SUPPORT THEREOF.

GEORGE C. DIX,
GORDON BUTTERWORTH,
1500 Walnut Street,
Philadelphia 2, Pa.,
Attorneys for Petitioner.

INDEX

TABLE OF CASES CITED

ACTS

IN THE

SUPREME COURT OF THE UNITED STATES.

October Term, 1951. No.

UNITED STATES OF AMERICA, EX REL.,
HUBERT JAEGELER,

Petitioner,

VS.

UGO CARUSI, Commissioner of Immigration and Naturalization and CARL ZIMMERMAN, District Director for District No. 2, Philadelphia,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

TO THE HONORABLE, THE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES OF AMERICA:

Your Petitioner, the United States of America, Ex Rel. Hubert Jaegeler, by his Attorneys, George C. Dix, Esq., and Gordon Butterworth, Esq., respectfully prays that a Writ of Certiorari issue to the United States Court of Ap-

peals for the Third Circuit to review a Judgment and Decree of that Court, dated April 2, 1951 affirming a Judgment of the United States District Court for the Eastern District of Pennsylvania, rendered October 9, 1950 in the above entitled action, dismissing a Writ of Habeas Corpus, and remanding Petitioner to the custody of Respondents.

The Order of the District Court was made by President Judge William H. Kirkpatrick and filed October 9, 1950. It appears on pages 45-6-A of the Record, and is not reported.

The Opinion of the Circuit Court of Appeals was written by Judge Gerald McLaughlin and was filed April 2, 1951 and appears at page 50 of the Record, and is recorded in 187 Fed. (2d) 912.

SUMMARY AND SHORT STATEMENT OF MATTERS INVOLVED.

(a) *Statement of Matters Involved.*

I.

This case involves a deprivation of Petitioner's Right of Voluntary Departure under the Alien Enemy Act (50 U. S. C. A. 21 et seq.) and Presidential Proclamation 2655 (59 Statutes 370) and the Immigration Act of 1924, 8 U. S. C. A. Par. 155-c.

II.

This case also involves a deprivation of the rights of an alien enemy to procedural due process under the Fifth Amendment to the Constitution.

III.

The case further involves a violation of International Treaties and Agreements.

Summary.

Relator, a native of Germany, was a lawful quota immigrant to the United States in 1925, and has lived in Philadelphia with his wife a naturalized citizen since 1930. On December 8, 1941 at 1.30 A. M. (after Pearl Harbor) he was taken into custody by the F. B. I., without a Warrant, as an alien enemy, given a Hearing by an Enemy Hearing Board, and on February 1, 1942, was interned for the duration of the Emergency. In January, 1946 (and after hostilities had ended) a Repatriation Board recommended his removal as being determined "to be dangerous to the public peace and safety of the United States". On May 3, 1946, his removal was directed.

In May, 1946, the State Department suggested to friendly governments "that their Consulates be instructed not to grant visas to those persons listed" (in the communication) (including Relator) "deemed to be dangerous, pending their removal to Germany (Record 26a). It also notified the Steamship Company (Record 41a).

On April 2, 1947, Relator was notified by the Department of Justice that "you may go to any country of your choice, if arrangements can be made" (18a). He was ordered to depart by May 22, 1947. On May 15, 1947, he Petitioned for a writ of Habeas Corpus, which was sustained June 16, 1947 (Memo. Opinion).

After Hearing, a trial issue was directed to permit Relator to prove that he had been deprived of the right of voluntary departure (Opinion, Kirkpatrick, J., July 15, 1947) Record 23a).

On a third reargument, the District Judge reversed his three prior orders, and dismissed the Writ of Habeas Corpus, and remanded Relator to the Custody of Respondents (Record 45a). Relator was voluntarily set at liberty in July, 1947 without security.

JURISDICTION.

The Jurisdiction of this Court is invoked under the provisions of the Act of June 25, 1948, c. 646-691 as amended (28 U. S. C. A. Par. 1254 and Par. 2101) as and for a Review of a Decree of the United States Court of Appeals for the Third Circuit.

THE QUESTIONS PRESENTED.

I. Whether Petitioner's right of voluntary departure as directed by the State Department and Department of Justice has been so effectively nullified by actions of those Departments in requesting foreign governments not to grant visas to Relator, as to create an impossibility of performance, and deprive Relator of that right, and

II. Whether a lawful quota immigrant, tho an alien enemy, is entitled to the full benefit of procedural due process under the Fifth Amendment to the Constitution, and

III. Whether the removal Order was in violation of International Treaties and Agreements to which the United States was and is a party?

IV. The error of the Circuit Court.

FURTHER QUESTION.

V. Whether, if the House Bill (recently passed) to end the War with Germany and sign a Treaty of Peace becomes a law of this country, these questions become moot, and whether Petitioner is entitled to a discharge from custody?

REASONS RELIED ON FOR ALLOWANCE OF WRIT.

I.

(A) In denying to Petitioner the right of voluntary departure, the Circuit Court of Appeals for the Third Circuit has decided a Federal question in a way that is in conflict with decisions of the Supreme Court of the United States and various Circuit Courts, and the Alien Enemy Act:

U. S. Ex rel. Von Heymann v. Watkins, 159 Fed. (2) 650;
U. S. Ex rel. Von Kleczkowski vs. Watkins, 71 Fed. Supp. 429;
U. S. Ex rel. Dorfner v. Watkins, 171 Fed. (2d) 431 Certiorari denied 5-31-49; 337 U. S. 914 (69 U. S. Rep. 1154);
U. S. Ex rel. Hoehn v. Shaughnessy, 175 Fed. (2d) 116;
The Alien Enemy Act, 50 U. S. C. A. Par. 21-2-3.

(B) In denying to Petitioner the right to prove factually that his voluntary departure had been effectively prevented

by the United States Government, the said Circuit Court has decided a Federal question adversely to the decision of the Supreme Court of the United States and various Circuit Courts, and has denied him the right to prove his case:

U. S. Ex rel. Dorfner vs. Watkins (supra);
U. S. Ex rel. Hoehn vs. Shaughnessy (supra).

II.

In denying to Petitioner, an enemy alien lawfully in the United States, the full benefits of Procedural due process under the Fifth Amendment to the Constitution, the said Circuit Court has rendered an opinion on a Federal question at variance with the decisions of the Supreme Court of the United States:

The Japanese Immigrant Case, 189 U. S. 86 (23-4 U. S. Rep. 611);
Wong Yang Sung vs. McGrath, 339 U. S. 33 (1950) (70 U. S. Rep. 445);
Knauf vs. Shaughnessy, 338 U. S. 309 (70 U. S. Rep. 309).

III.

In approving the removal of the Relator as an enemy alien, without the formality of a hearing, the preferring of charges, the production of witnesses or testimony, or an opportunity to disprove the charges, the Circuit Court violated the spirit and letter of the United Nations Charter and International Agreements.

Charter of United Nations June 26, 1945, Chapter IX, Art 55, "Observance of human rights and fundamental freedoms". (1945 Congressional Service, p. 964.) Ratified by the U. S. Senate July 28, 1945. Operative Oct. 24, 1945.

United States Participation Act (Public Law 264, 1945 Congressional Service, p. 598).

Presidential Address recommending approval (1945 Congressional Service 561).

IV.

That the Circuit Court of Appeals for the Third Circuit by its opinion filed April 2, 1951 (Record 50-) erred in affirming the decision of the District Court for the Eastern District of Pennsylvania dated October 9, 1950 (Record 45a) dismissing the Writ of Habeas Corpus and remanding Relator to the custody of Respondents.

V.

ADDITIONAL REASON.

If Congress shall have passed the Act now before it, terminating the War with Germany, and providing for a Treaty of Peace, will not the pertinent Acts and procedure become inoperative and Petitioner become entitled to a discharge from custody?

U. S. Ex rel. Ludecke vs. Watkins, 163 Fed. (2d) 143;

U. S. Ex rel. Wiczynski vs. Shaughnessy, 185 Fed. (2d) 349.

It is important that there should be uniformity of decisions among the Circuit Courts of Appeal, particularly on questions involving removal of persons lawfully in the United States, and their personal freedom and liberty, and it is in the public interest that these questions be decided by the Court of last resort.

For these reasons it is respectfully submitted that this Petition should be granted.

GEORGE C. DIX,
GORDON BUTTERWORTH,
Attorneys for Petitioner.

BRIEF.

I.

Whether Petitioner's right of voluntary departure as provided for by Statute and as directed by the State Department was so effectively nullified by actions of the Government as to create an impossibility of performance, and deprive him of that right

and

Was Petitioner entitled to prove the acts complained of, and show that they did prevent his voluntary departure.

(a) RIGHT TO VOLUNTARY DEPARTURE.

The Alien Enemy Act [1] guaranteed to Petitioner the right of voluntary departure, if and when he was ordered to depart from this country. This right was upheld by Mr. Justice Chase in the Von Heymann case [2] which opinion held:

> "His present restraint by the Respondent is unlawful in so far as it interferes with his voluntary departure, since the enforced removal, of which his present restraint is a concomitant, is unlawful before he does 'refuse or neglect' to depart.
>
> It does not appear that this Relator has ever refused, or, except because of his internment, ever neglected to depart."

Judge Rifkin, in the Von Kleczkowski case [3] held,

---

[1] The Enemy Alien Act, 50 U. S. C. A. §21-2-3 (§4067—Rev. Statute).

[2] U. S. Ex rel Von Heymann v. Watkins, 159 Fed. (2d) 650.

[3] U. S. Ex rel Von Kleczkowski vs. Watkins, 71 Fed. Sup. at 429.

"Enemy Aliens ordered removed from the United States have the choice of voluntary departure."

and in the Hoehn case [4] Mr. Justice Chase declared:

"Even if we could accept the unsupported statement in the Brief as to Blacklisting, it would not help the Appellant in the absence of any indication that he tried to depart voluntarily, and was for that reason unable to do so."

(b) NOTICE TO DEPART.

Pursuant to the authority contained in the Alien Enemy Act the President, on July 14, 1945 issued his Proclamation #2655 (10 R. F. 8947) (U. S. Congressional Service, 1945, p. 1186) (Abstracted at p. 49a of Record) and directed the Attorney General to remove alien enemies—in accordance with such Regulations as he might prescribe; and

By Proclamation #2685 (11 F. R. 4079) (U. S. Congressional Service, 1946, p. 1721) the President fixed 30 days as a reasonable time within which to depart after receipt of such notice.

On April 2, 1947, the Department of Justice notified Relator

"* * * under the terms of your removal order you may proceed to any country of your choice, if arrangements can be made."

(See Record, p. 18a.)

This means any arrangements that Relator can make.

---

[4] U. S. Hoehn vs. Shaughnessy, 175 Fed. (2d) 116.

(c) RELATOR LEARNS OF PREVENTIVE MEASURES.

It was then for the first time that he learned of the measures taken by Respondents to prevent his voluntary departure, and in truth to prevent him from departing to any country except Germany.

(d) WHAT WERE THE PREVENTIVE MEASURES.

Defendant has admitted that it sent a communication to certain foreign Governments, containing the celebrated Blacklist of 417 names including Relator's name, suggesting that their Governments instruct their Consuls not to grant visas to these persons [5] and the Memorandum sent to Foreign Governments,[6] and the note sent to Switzerland [7] and the Notice to the Steamship Company,[8] and in answer to Defendant's motion to dismiss the Writ of Habeas Corpus, Relator filed a Traverse alleging these facts (19a of Record).

(e) RELEASE FROM CUSTODY.

However, it was not until later that Relator was released from custody (Ellis Island) by the Respondent, and he *immediately made* whole hearted efforts to depart.

---

[5] Affidavit of E. E. Hunt of State Dept. to Defendant's Motion to dismiss Habeas Corpus—Record 26-a.

[6] Memorandum of July, 1946—Record 31-a.

[7] Note to Switzerland—June, 1946—Record 34-a.

[8] Letter to Alcoa Steamship Co., July 1, 1946—Record 41-a.

(f) EFFORTS TO DEPART.

At the Argument before Judge Kirkpatrick in District Court on the motion to dismiss and the Traverse, Relator, thru Counsel, offered to prove that he had gone to all the Consular Offices listed in New York City and that none of them would grant him a visa, and excused themselves on the basis of the communications from Defendants, some of them even showing him the very communications and Blacklist.

The following is the list of Consular Offices listed in the Telephone Books of New York in July, 1947 and which we must assume is all of the then available offices; as well as those later listed. We classify the efforts made at each of them at that time in the light of the Opinion of the Circuit Court of Appeals:

1. Albania. No Office—behind the Iron Curtain.

2. Afghanistan. No Office in July, 1947.

3. Argentine. He applied and was refused.

4. Australia. He applied and was refused.

5. Austria. No office in July, 1947.

6. Belgium. He applied and was refused.

7. Bolivia. He applied and was refused.

8. Brazil. He applied and was refused.

9. Burma. No office in July 1947. Free 1-8-48.

10. Canada. He applied and was refused.

11. Chile. He applied and was refused.

12. China. No office in July 1947. Part was in control of Russia and part in U. S.

13. Columbia. He applied and was refused.

14. Costa Rica. He applied and was refused.

15. Cuba. He applied and was refused.

16. Czeckoslavia. No office—(Behind Iron Curtain).

17. Denmark. He applied and was refused.

18. Dominican Republic. He applied and was refused.

19. Ecuador. He applied and was refused.

20. Egypt. He applied and was refused.

21. El Salvador. He applied and was refused.

22. Estonia. No office (Behind Iron Curtain).

23. Ethiopia. No office (Controlled by Enemy—Italy).

24. Finland. He applied and was refused.

25. France. He applied and was refused.

26. Great Britain. He applied and was refused.

27. Greece. He applied and was refused.

28. Guatamala. He applied and was refused.

29. Germany. Enemy Country

30. Haiti. He applied and was refused.

31 Honduras. He applied and was refused.

32. Hungary. No office (under Control of Russia).

33. Iceland. No office (under Control of Denmark, who refused).

34. India. No office (under control of British Crown, who had refused).

35. Iran. Office was closed.

36. Irac. No office in July 1947.

37. Ireland. No office in July 1947.

38. Israel. No office in July 1947 (British Mandate till 5-14-49).

39. Italy. Enemy country.

40. Lebanon. No Office (British controlled).

41. Liberia. Negro Republic.

42. Lithuania No Office (Behind Iron Curtain).

43. Luxenbourg. No Office (Control of Allied Military).

44. Mexico. He applied and was refused

45. Monaco. Required $5,000 cash for entry. (Relator was imprisoned for 4 years, and without funds.)

46. Netherlands. He applied and was refused.

47. New Zealand. He applied and was refused.

48. Nicaraugua. He applied and was refused.

49. Norway. He applied and was refused.

50. Pakistan. No office (Member of British Comm. of Nations).

51. Panama. He applied and was refused.

52. Paraguay. He applied and was refused.

53. Peru. He applied and was refused.

54. Russia. Behind the Iron Curtain.

55. Poland. No office (Behind Iron Curtain).

56. Roumania. No office (Behind Iron Curtain).

57. Portugal. He applied and was refused.

58. Spain. He applied and was refused.

59. Sweden. He applied and was refused.

60. Switzerland. He applied and was refused.

61 Syria. No office (French Mandate).

62. Turkey. He applied and was refused.

63. Union of S. Africa. He applied and was refused.

64. Uraguay. He applied and was refused.

65. Venezuela. He applied and was refused.

66. Yugoslavia. No office (Behind Iron Curtain).

67. Bulgaria. No office (Behind Iron Curtain).

We must bear in mind that Relator had been in custody since December 9, 1941, and had no income and was without funds. Part of the time his wife spent with him, voluntarily, in custody, and part of the time she worked to support herself.

(g) WERE HIS EFFORTS TO DEPART HONEST.

Judge McLaughlin, in his opinion, (Record 50a) said that there were nations that were not notified, and named Germany (29) and Austria (5) (but they were enemy countries) and Yugoslavia (66), Russia (54), Czechoslovia (16), Roumania (56), Hungary (32), Bulgaria (67) and Albania (1) (but they were all behind the iron curtain) China (12) (which had no representative Government to whom to apply) India (34) (which was part of the British Commonwealth of Nations, and governed from London) and Irac (36). In addition, Germany (29), Austria (5), Yugoslavia (66), Czechoslavia (16), Roumania (56), Hungary (32), Bulgaria (67), Albania (1), China (12), India (34), and Irac (36) did not have any Consular Offices to which Relator could apply for a visa. The Judge said there was a wide choice of places, citing Austria (5), India (34) and Yugoslavia (66), but that was not so, as we have just shown. The Judge then went on to say:

> "It would seem that Appellant was faced with no real dilemma. He just did not bother."

Under the decisions cited, Relator was entitled to show any real effort to voluntarily depart, and why he did not succeed. The Court refused Relator the opportunity to show that it was impossible to go. The Dorfner case [9] was cited as the authority for the opinions of both the District and Circuit Courts, altho the Hoehn case (supra) later explained that case. The Courts both said that if there was any place to which he could go (except his native country), he must go there. However, if the Defendant stops Relator from going to those places, then it cannot be adjudged that he could go there.

II.

An enemy alien has been denied the benefits of Procedural Process, under the Fifth Amendment.

Mr. Justice Chase in the Von Heymann case (supra) said that the power to remove was vested in the President, in certain cases, to maintain the Security of the country. The Presidential Proclamation was made July 14, 1945. Relator was in custody from 1941 until 1947, when the Defendant decided to remove him. The War was over. The Government was seeking a rapproachment with Germany. Relator has been free since 1947. The Court in that case went on to say:

> "But tho the Statute under which appellee is restraining Relator, pursuant to executive orders, is applicable, it does not follow that the present restraint is lawful."

We quote the Japanese Immigrant case [10]

---

[9] U. S. Ex rel Dorfner vs. Watkins, 171 Fed. (2) 431.

[10] The Japanese Immigrant Case, 189 U. S. 86 (23-4 U. S. Rep. 309).

> "This Court has never held, nor must we now be understood as holding, that Administrative Officers, when executing the provisions of a Statute involving the liberty of persons, may disregard the fundamental principles that inhere in 'due process of law' as understood at the time of the adoption of the Constitution. Therefore it is not competent for—an executive officer,—arbitrarily to cause an alien—even tho illegally here—to be taken into custody and *deported without giving him* all opportunity to be heard,—no such arbitrary power can exist where the principles involved in due process of law are recognized."

An alien within the United States, particularly if lawfully here, unlike one applying at the border, is entitled to the full benefits of procedural due process under the Fifth Amendment.[11]

This must mean that in a removal proceeding grounded in National Security, as in all other deportation proceedings, expulsion may be ordered only in accordance with law, after a fair hearing at which the alien is fully apprised of the evidence against him and given an opportunity to be represented by Counsel, to refute the charges and to present countervailing evidence[12] and the decision must be based on the evidence in the Record.[13]

This is a removal case, but an analogy is a deportation case in which limited judicial review can be invoked by Habeas Corpus, and the inquiry then is whether a fair hearing in conformity with law was had on the basis of substantial evidence.[13] That is our instant case. As in the Von Kleczkowski case (supra) Relator sought to prove not that the decision was wrong, but that

---

[11] Wong Yang Sung v. McGrath, 339 U. S. 33 (1950) (70 U. S. Rep. 445).

[12] Whitfield vs. Hanges, 222 Fed. 745.

[13] Vajtauer, v. Commissioner, 273 U. S. 103 (47 U. S. Rep. 303); Bridges vs. Wixon, 326 U. S. 135 (65 U. S. Rep. 1443).

evidence was improperly received, that he was never acquainted with the charges, nor faced with his accusers, that the evidence was never known, and but for that unproduced evidence, it is wholly speculative, yes, in this case definitely determined that no adverse finding could have been made as Mr. Justice Jackson said in his dissent in the Knauf case:[14]

> "Congress will have to use more explicit language than any yet cited before I will agree that it has authorized any administrative officer to break up the family of an American citizen * * *"
>
> "I cannot agree that it (Congress) authorized a finding of serious misconduct against the wife of an American citizen without notice of charges, evidence of guilt and a chance to meet it."
>
> "I should direct the Attorney General either to produce his evidence justifying exclusion, or to admit Mrs. Knauf to the country."

III.

Was the removal "Order" in violation of the spirit and letter of international agreements?

At the outbreak of activities, on December 8, 1941, an emergency arose which required that our Government take every precaution to protect itself and our country. That was common sense, and as citizens we are thankful that it was done. Along with thousands of other persons, Relator was detained in custody "for the duration of the emergency". To all intents and purposes, the emergency ended in 1945. Congress has not yet completed action on a Treaty

---

[14] Knauf v. Shaughnessy, 338 U. S. 537 (70 U. S. Rep. 309); Klaprott v. United States, 335 U. S. 601; 336 U. S. 942 (69 U. S. Rep. 384).

with Germany, but the House passed a Bill to that effect two weeks ago, at the President's request, and sent it to the Senate.

Relator was released, on parole, in July 1947, and has been at unrestrained liberty from then to the present time. If there was any justification for his detention in 1941, it certainly has long since ceased to exist. We can only surmise that the cause has ceased to exist, but we do not yet at this late date know what the cause for the arrest was. We were never told.

It is to the pressing of the action for Relator's removal in the year of Grace 1951, that we now address ourselves. In the Preamble to our own Constitution, we declared "all men are endowed by their Creator with certain inalienable rights—among these—life, liberty and the pursuit of happiness"; but of what use are they to Relator, if he can not enjoy them. Remember, he was and is lawfully within this country and therefor entitled to the enjoyment and protection of those rights.

Methinks it was for the preservation of human rights that we fought our wars, including, with much protestation, the last two in Europe. In order to safeguard the rights of individual people, we then caused to be formed the United Nations and the United Nations Charter. It was prepared here, signed here, fought for here as well as in Korea. It is the Law of this Country for it was ratified by Congress on July 28, 1945; Article 55 was addressed to the observance of human rights and the preservation of human freedoms. In recommending the adoption of the Participation Act of 1945, the President said: "our first need is to take part in the several agencies" of that organization.

Our Country then took part in a number of conferences with other nations, resulting in the Adoption of the Emergency Advisory Council for Political Defence (Title 50 U. S. C. A. Par. 220), and the Act of Chapultpec. They were formed, held and adopted at our insistence, and on April 12, 1946 the Emergency Advisory Counsel adopted Resolu-

tion XXVI, which recommended a uniform standard for all proceedings relative to removal, and proposed certain criteria as to what constituted "dangerous persons". Paragraph 3 a-b set forth some considerations to be considered in determining the advisability of removing such persons. These were later incorporated into the Inter-American Treaty of Reciprocal Assistance of September 2, 1947.

Relator has been the husband of an American citizen since 1930, and has lived with her and supported her during all of that time, except during part of his incarceration.

We must assume that our Government intended to be bound by the United Nations Charter and the other International Agreements, because we claim to be fighting to preserve the sanctity of International Agreements. They may not be Treaties; but Presidential Proclamations, and private decisions of the Attorney General's Office are not, either.

While Resolution XXVI was specifically addressed to the control and detention of persons who actively supported the war efforts of the enemies, it was also intended to cover that much larger group who were considered dangerous or possibly dangerous. It recited that almost all countries limited the measures taken to detention—either for humanitarian or security reasons, and that many were set free before the end of 1945. It recited that Resolution XX only recommended detention for the duration of the War; and that any one really dangerous should not be released, even to his own country. It defined as follows:

Part II, (A) Criteria for determining whether a person is dangerous, (1) dangerous persons—those who have engaged in

(a) "* * * *espionage, sabotage* or other *subversive Acts* to the detriment * * *"

"It shall not be necessary to have a penal conviction * * * but to have proof of such facts.

(b) *Military participation.*

(c) *Participation in propaganda or commercial operations.*

Different treatment was provided for different degrees of dangerousness.

By Paragrah A-2 of the Resolution itself (p. 20) dangerous persons were classified as above set forth, and by Paragraph A-3 it was determined that even if such person was deemed dangerous, it should not apply to a person who could show

> (C) that his spouse * * * is a national of an American Republic and that the conjugal ties have been established and are maintained in good faith.
>
> (Attached to and forming part of Defendant's Motion to Dismiss the Petition for Habeas Corpus. Excerpts therefrom (Record 25a)).

IV.

Error.

For the reasons already advanced, the Circuit Court of Appeals, by its Opinion of April 2, 1951, erred.

V.

Further Question.

The House of Representatives, in August 1951, and at the request of the President, passed a Bill terminating the War with Germany. It was sent to the Senate. It may become law before this Petition can be acted upon, or before the case (if Certiorari is granted) can be argued. In that case Relator will no longer be an enemy alien, and the

procedure will no longer apply. Chief Justice Learned Hand held:[15]

> "We must dispose of Orders entered in Habeas Corpus proceedings according to the law as it exists at the time when we decide the appeal, and not at the time when the Order itself was entered."

It is therefore respectfully submitted that

(a) Relator was deprived of his right of voluntary departure and is entitled to a fact issue to establish that fact; and that

(b) Relator was deprived of the right to procedural due process under the Fifth Amendment, and

(c) That the removal Order was in violation of International Treaties and Agreements;

(d) That the United States Court of Appeals for the Third Circuit erred in affirming the Order of the District Court, in dismissing the Writ of Habeas Corpus and remanding Relator to the custody of Respondents;

(e) That if the War with Germany is terminated, then Relator should be released;

and that a Writ of Certiorari should issue in the above entitled case.

Respectfully submitted,

GEORGE C. DIX,
GORDON BUTTERWORTH,
Attorneys for Petitioner.

---

[15] U. S. Ex rel. Wiczynski vs. Shaughnessy, 185 Fed. (2) 349.
U. S. Ex rel. Pizzuto vs. Shaughnessy, 184 Fed. (2) 666.
U. S. Ex rel. Ludecke vs. Watkins, 163 Fed. (2) 143.